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September 26, 2019

The Honorable Mark Esper
 Secretary
 Department of Defense
 1500 Defense Pentagon
 Washington, D.C. 20301

Dear Mr. Secretary,

We are writing today to express our concern that certain members of the National Guard deployed to the southern border in support of Operation GUARDIAN SUPPORT are not receiving active duty service credit towards Post-9/11 GI Bill eligibility.

Section 3301(1)(C)(ii) of Title 38, United States Code (U.S.C.) provides that service by members of the Army and Air National Guard, "under section 502(f) of title 32 U.S.C. when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds" is creditable "active duty" towards Post-9/11 GI Bill entitlement. On February 15, 2019, President Trump issued Presidential Proclamation 9844 which declared a national emergency on our southern border and members of the Guard have been deployed to respond to that emergency.

We understand that the Department is relying on guidance issued under the prior administration to improperly deny these members of the Guard Post-9/11 GI Bill eligibility. Specifically, in its January 13, 2016 Memorandum, the office of the Principal Deputy Assistant Secretary for Defense for Manpower and Reserve Affairs opined that, in the future, only orders carried out under section 32 U.S.C. 904 are eligible for the Post-9/11 GI Bill Benefits. We do not believe that this policy is aligned with the plain language and Congressional intent of section 3301 of title 38, U.S.C.

The memorandum further stated that members of the National Guard who served in Operation NOBLE EAGLE were given Post-9/11 GI Bill eligibility and served under section 502(f)(2)(A) of title 32, U.S.C. While these units remained under the control of the state governor, they were still supported by federal funding and are eligible for federal benefits, including the Post-9/11 GI Bill.

We have, received a copy of orders from a member of the Texas National Guard serving as part of Operation GUARDIAN SUPPORT that cite the authority under which they were called

to Full Time National Guard Duty as section 502(f)(2)(A) of title 32, U.S.C., but who was also told that his service is not creditable towards Post-9/11 GI Bill eligibility.

We respectfully ask that you review whether the men and women standing post and protecting our southern border are improperly being denied credit towards Post-9/11 GI Bill benefits. If the Department determines that individuals deployed to the southern board under section 502(f) orders are not entitled to "active duty" credit towards Post-9/11 GI Bill eligibility, please provide the legal basis for that decision. Finally, we would like to know how the Department informs members of the National Guard serving in Operation GUARDIAN SUPPORT whether their service counts towards Post-9/11 GI Bill eligibility.

Thank you for your attention to this matter. We look forward to your response. If you have any questions concerning this request, please contact Jon Clark, Republican Staff Director of the Subcommittee on Economic Opportunity, at (202) 225-3527.

Sincerely,

A handwritten signature in blue ink, appearing to read "David P. Roe".

DAVID P. ROE, M.D.
Ranking Member

A handwritten signature in blue ink, appearing to read "Gus M. Bilirakis".

GUS BILIRAKIS
Ranking Member
Subcommittee on Economic Opportunity

CC: The Honorable Mark Takano, Chairman
The Honorable Mike Levin, Chairman, Subcommittee on Economic Opportunity